IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 22587

DANIEL SORANNO,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S OPENING BRIEF

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JURISDICTION

This is an appeal from a judgment rendered by the United States District Court for the Eastern District of California.

The appellant was sentenced to the custody of the Attorney General for a period of three years after a one count conviction for violation of Title 50, United States Code App., Section 462 (knowingly fail and refuse to be inducted into the Armed Forces of the United States), Universal Military Training and Service Act [TR 6].[1]

Title 18, United States Code, Section 3231, conferred jurisdiction in the District Court over the prosecution of this case. The United States Court of Appeals for the Ninth Circuit has jurisdiction of this appeal under Rule 37 (A) (1) and (2) of the Federal Rules of Criminal Procedure. Notice of Appeal was filed in the time and manner required by law [TR 7].

STATEMENT OF THE CASE

The indictment charged appellant with a violation of the Universal Military Training and Service Act for refusing to submit to induction [TR 2].

Appellant pleaded "not guilty" and was tried by the Honorable Thomas L. McBride, District Judge, sitting alone without a jury. Appellant was found guilty and sentenced to imprisonment for a period of three years [TR 6].

A written motion for judgment of acquittal was filed during the trial [TR 3 and RT 16, line 1].[2]

The appellant was found guilty [TR 4].

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1. TR refers to the Transcript of Record.
2. RT refers to the Reporter's Transcript.

FACTS

Appellant presented two sets of facts that require our consideration:

A.

Appellant was a student on September 20, 1964 when he wrote his local board requesting the Special Form for Conscientious Objector [Ex. 12].[3]

He timely filed said form on September 30, 1964 and was then "classified as a student until June '65" [Ex. 12] on October 26, 1964.

On October 15, 1965 he was classified as a conscientious objector, in Class I-O [Ex. 12].

On October 26, 1965 he wrote appealing the I-O classification pointing out that he was a full time student [Ex. 12].

On November 11, 1965 the board made an entry "Case reopened—Class I-A." [Ex. 12].

He took an appeal from this but the Appeal Board kept him in the same I-A classification [Ex. 13].

B.

Thereupon, he was ordered to report for induction but did not report [Ex. 13].

He gave as his reasons for not reporting that he had a fragile, artificial bridge to his nose, at that time awaiting further nose surgery and that he feared he would be "socked" on the nose at the induction station:

3. Ex. refers to Government's Exhibit.

1. "Q. Now, you wrote to the Local Board on a number of subjects and one of them is the condition of your nose, right?
   A. Yes.
   Q. On Pages 30, 40, 41, 57, and other references. I am going to read you portions of your letter that is on Pages 41 and 42 and ask if this gives the correct situation of the condition of your nose: 'On April 11, 1963, I underwent surgery on my nose to correct—' " [RT 43].

2. "THE WITNESS: Well, because I had read in the San Francisco Chronicle, as well as other sources, that people that do report sometimes are harassed or actually they can be socked by other inductees, or something, because of other reasons, in other words, it could be quite violent. I would try to avoid such places where I could get hurt obviously and fear was one of the things that really made me hesitate and really made me stop and wonder because I could get hurt down here just by going and saying to the officials that 'No, I am not going to go in the Army,' plus I have read of cases in the past where people that have reported—I am not sure whether it was Estop or one of those was, but they had reported down to the Induction Station and told the officials that they wouldn't allow themselves to be inducted and the official said, 'Well, you have already been inducted, you showed up,' and, therefore, they'd be tried in a military court instead of a civilian court and a military court, it seems to me, they don't listen to much reason concerning the conscientious objector's beliefs." [RT 75].

3. "Q. On November 25th, 1966, after you failed to report for induction as ordered, you wrote a letter to your Local Board asking them to give you another chance to report so that you could report this time and thereby exhaust your administrative remedy?
A. Yes, sir.
Q. Then you were given that other opportunity to report, this time in March of 1967, and you again failed to report?
A. Yes, sir.
Q. Again because you were afraid?
A. Yes, because I was afraid even more so at this time after reading the many reports.
Q. Why did you in November of 1966 ask your Board to give you another opportunity to report if you were afraid to report?
A. On that day I talked to or had the Attorney in Sacramento talk to the United States Attorney, Mr. Sloan, and for some reason he gave me a pep talk that I should show up, in other words, I was, you know, had just been filled out more or less." [RT 95].

Appellant's additional statements concerning the condition of his nose are found in the Exhibit, Pages 30, 40, 41 and 57.

QUESTIONS PRESENTED

I

Was a denial of a deferred classification to appellant, by the Selective Service System, without basis in fact, arbitrary and contrary to law? This was raised by the Motion for Judgment of Acquittal.

SPECIFICATION OF ERROR

I

The District Court erred in denying the Motion for Judgment of Acquittal.

SUMMARY OF ARGUMENT

I

Appellant made out a prima facie case as a conscientious objector. The task of the court is to search the record for some affirmative evidence to support the local board's denial of I-O classification to appellant. The record in this case is barren of any such evidence.

ARGUMENT

The Denial of a Conscientious Objector Classification by the Selective Service System Was Without Basis in Fact, Arbitrary, Capricious and Contrary to Law.

Section 6 (j) of Title 1 of the Universal Military Training and Service Act, as amended [50 U.S.C. App. 456 (j)], provides:

> "Nothing contained in this title . . . shall be construed to require that any person be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form . . ."

Section 1622.14 (A) of the Selective Service Regulations [32 C.F.R. 1622.14 (A)] provides:

> "1622.14 Class I-O: Conscientious Objector Available for Civilian Work, Contributing to the Mainte-

nance of the National Health, Safety or Interest.—(A) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

The local board's duties and the courts' scope of review in draft cases were spelled out by the United States Supreme Court in *Dickinson* v. *United States*, 74 S.Ct. 152, 157, 158, 346 U.S. 389 (1953):

> "The task of the courts in cases such as this is to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities. . . . If the facts are disputed the board bears the ultimate responsibility for resolving the conflict—the courts will not interfere. Nor will the courts apply the test of 'substantial evidence'. However, the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exemption."
>
> ". . . when the uncontroverted evidence supporting the registrant's claim places him prima facie within the statutory exemption, dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concepts of justice."

The dissenting opinion of Mr. Justice Jackson states the teachings even more explicitly (74 S.Ct. 152, 159):

> "Under today's decision, it is not sufficient that the board disbelieve the registrant. The board must find and record affirmative evidence that he has misrepresented his case. . . ."

In the present instance appellant made out a prima facie case for a I-O classification when he asked for and then filed with the local board his Form 150 in which he claimed conscientious objection to war in any form based upon religious training and belief.

The government's case (the appellant's Selective Service file placed in evidence as the government's exhibit) is totally barren of any evidence whatsoever tending to cast the slightest doubt on appellant's sincerity or truthfulness, or that he hasn't presented a correct picture.

Thus the local board's denial of I-O classification to appellant and classifying him in Class I-A was without basis in fact and upholding that arbitrary classification would be contrary to the rule of law as set forth in *Dickinson.*

CONCLUSION

For the reasons above stated, the judgment of the district court should be reversed and an order entered directing the district court to render and enter a judgment of acquittal.

Respectfully submitted,

J. B. Tietz
Attorney for Appellant

May 10, 1968.

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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